

**At the hearing, the claimant provided her Schedule C and Schedule K-1, which showed that her net income from self-employment during the 2019 calendar year totaled \$54,529. Her weekly benefit amount for the PUA program will be based on that amount.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: N6-F88K-7D4F**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) denying an increase to the claimant's entitlement to Pandemic Unemployment Assistance (PUA benefits). We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was approved in a determination issued on May 13, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination to assign the minimum weekly benefit amount in a decision rendered on February 17, 2021. We accepted the claimant's application for review.

The review examiner determined that the claimant was eligible for only the minimum weekly benefit amount, as the claimant did not present sufficient evidence to verify her alleged 2019 net income from self-employment. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not present sufficient evidence of her 2019 net income from self-employment to warrant a higher weekly benefit amount, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) effective March 8, 2020. The benefit rate is \$267.00.
2. In 2019 the claimant was self-employed as a musician, writer, and computer trainer.

3. The claimant showed a 2019 K1 ordinary business income (loss) of \$31,278 and self-employment earnings (loss) of \$28,724.
4. The claimant showed an IRS Form 1056X ordinary business income (loss) of \$78,346 and net earnings (loss) from self-employment of \$62,566. The claimant is not listed as the partner.
5. The claimant showed a 2019 1099 to [Company A] in the amount of \$26,889.
6. The claimant showed a 2019 1099 to [Company A] in the amount of \$8,525.
7. The claimant showed a 2019 1099 to the claimant DBA [Company A] in the amount of \$16,220.
8. The claimant showed a 2019 1099 to the claimant and [Company A] in the amount of \$7,957.25
10. The claimant showed a 2019 1099 to [Company A] in the amount of \$5,088.
11. Per her 2019 Schedule C filed with her 2019 taxes, the claimant's net profit was \$3,233.
12. The claimant showed an amended 2019 K1 ordinary business income (loss) \$51,296 and self-employment earnings (loss) \$47,107.
13. The claimant received a Notice of Income Verification Determination issued May 13, 2020.
14. The claimant timely appealed.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not present sufficient evidence to verify her 2019 net income from self-employment.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and administered by the U.S. Secretary of Labor.<sup>1</sup> The CARES Act specifies that a claimant's benefit rate under the PUA program is governed by 20 CFR 625.6, which provides, in relevant part, as follows:

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

(a) In all States, except as provided in paragraphs (c) and (d) of this section, the amount . . . payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment. In no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week.

(1) Except as provided in paragraph (a)(2) or (b) of this section, in computing an individual's weekly amount . . . qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied . . .

(2) For the purposes of paragraph (a)(1) of this section the base period to be utilized in computing the . . . weekly amount shall be the most recent tax year that has ended for the individual (whether an employee or self-employed) . . . . The self-employment income to be treated as wages for the purpose of computing the weekly amount under this paragraph (a) shall be the net income reported on the tax return of the individual as income from all self-employment . . . .

The CARES Act also incorporates applicable state law in determining a claimant's covered employment and wages. This includes G.L. c. 151A, § 1(s)(a), which provides, in relevant part, as follows:

(s)(A) "Wages", every form of remuneration of an employee subject to this chapter for employment by an employer, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all remuneration paid in any medium other than cash.

Thus, a claimant's PUA benefit will be calculated based on a claimant's gross wages as well as net income from any self-employment for the 2019 calendar year.

The claimant submitted an amended 2019 Schedule K-1, Form 1065, in which she reported that her share of the net-income from her partnership totaled \$51,296. Finding of Fact # 12. In addition, she submitted her 2019 Schedule C showing she made an additional \$3,233 from another source of self-employment. Finding of Fact # 11. Therefore, the claimant presented sufficient information to verify that her net income from self-employment was \$54,529 for the 2019 calendar year. *See Findings of Fact ## 11 and 12.*

We, therefore, conclude as a matter of law that, the claimant's PUA benefit entitlement should be calculated based on a total 2019 income of \$54,529.

The review examiner's decision is affirmed in part and reversed in part. The claimant is monetarily eligible for PUA benefits, but her weekly rate and total PUA benefits shall be calculated based upon her net income from self-employment of \$54,529 for the 2019 calendar year.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 13, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

LSW/rh